

Canada criticized for invoking treaty on Line 5; Ottawa seeking delay of shutdown under terms of 1977 pipeline agreement

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Body

Environmental activists in the United States are seizing on Canada's decision to invoke a 44-year-old treaty with the United States as an "audacious," misguided and misleading gambit aimed at short-circuiting Michigan's effort to shut down the Line 5 cross-border pipeline.

Oil & Water Don't Mix, a coalition of Michigan environmental and Indigenous groups that includes the Sierra Club and the Michigan Climate Action Network, said Tuesday it has a 33,000-signature petition it plans to circulate among U.S. lawmakers this week.

The petition urges U.S. President Joe Biden to support the state of Michigan and Gov. Gretchen Whitmer in their legal effort to shut down Line 5, a 68-year-old pipeline that crosses beneath the Great Lakes to deliver crude oil and natural gas liquids from Canada to the U.S. Midwest.

Last week, the federal government filed court documents confirming that it wants formal negotiations with the U.S. under the terms of a 1977 treaty specifically drafted to deal with cross-border pipelines, and asking Judge Janet Neff to hold the case in abeyance.

"We're calling on the president to stand with Gov. Whitmer in rejecting Enbridge's delay tactics," said Sean McBrearty, the co-ordinator for Oil & Water Don't Mix.

McBrearty called the treaty tactic a "direct attack on our sovereignty" that intentionally misinterprets the treaty itself "to make the audacious claim that we must leave a major risk pumping oil indefinitely through the heart of the Great Lakes."

He pointed to the oil spill last week off the coast of California, which was likely the result of an underwater anchor strike - precisely the sort of peril that Whitmer and her supporters fear could befall the Great Lakes shoreline if Line 5 continues to operate.

"This fight is not really about Enbridge's fuel," he said. "This fight is about Michigan's water."

Andy Buchsbaum, the legal adviser for the National Wildlife Federation, said when it comes to pipeline safety and environmental concerns, Michigan is well within its rights to demand the line be shut down.

"The government of Canada is misrepresenting the terms of the 1977 treaty, which explicitly authorizes Michigan to take exactly the kind of action it did when it issued the order shutting down the pipeline," Buchsbaum said.

The shutdown order "is actually authorized by the same treaty that Canada claims invalidates the shutdown order."

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Michigan's attorney general showed similar contempt for Canada's move, disputing the notion that treaty talks are relevant to the legal matters at hand and that the hearings should be paused to allow those talks to proceed.

"Canada is wrong on both counts," Dana Nessel wrote in a response filed in court last week.

"Neither the 1977 Transit Pipelines Treaty itself nor Canada's recent invocation of the dispute resolution process ... are relevant to the sole legal issue now before this court: whether it has jurisdiction over the state's complaint removed by Enbridge."

Canada's letter, she continues, "is devoid of any legal authority or persuasive argument for its assertion that this court should decline to rule" on the matter.

Proponents of Line 5 say its 540,000 barrels of crude oil and natural gas liquids per day are a vital energy source for markets across the Midwest, including Michigan, Ohio and Pennsylvania, as well as Canadian refineries. Enbridge has insisted from the outset it has no plans to voluntarily shut down the pipeline.

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